

**WESTERN INTEGRATED NETWORKS OF WASHINGTON OPERATING, LLC  
SEATTLE FRANCHISE AGREEMENT**

**SECTION 1. NATURE AND TERM OF GRANT.**

1.1 Grant of Franchise.

- (A) The City of Seattle hereby grants to Western Integrated Networks of Washington Operating, LLC, a Delaware limited liability company, having its principal place of business at 2000 South Colorado Boulevard, Suite 2-800, Denver, Colorado 80222, a franchise to install, construct, operate and maintain a Cable System to provide Cable Services under such terms and conditions as are set forth in this Ordinance.
- (B) Throughout this Franchise, The City of Seattle, Washington shall be referred to as the "City," and Western Integrated Networks of Washington Operating, LLC, shall be referred to as the "Grantee."

1.2 Duration of Franchise. The term of this Franchise, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be ten (10) years from the effective date of this Franchise, unless terminated earlier as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be \_\_\_\_\_, subject to applicable law and subject to Grantee's written acceptance of its terms within 30 days following the effective date.

1.4 Franchise Not Exclusive. This Franchise is not exclusive. The City reserves the right to grant rights or franchises to other persons, and reserves its own right as a municipality to use the Rights of Ways for the same or different purposes allowed Grantee hereunder, by franchise, permit or otherwise; provided, if the City grants any franchise for or otherwise permits the provision of Cable Services in Grantee's Franchise Area on terms that, taken as a whole, are materially less burdensome than this Franchise, taking into account any difference in the number of subscribers served, the term of such Franchise and all other circumstances affecting the relative burdens, Grantee shall have the right to reopen this Franchise pursuant to Section 20 for the purpose of modifying only those terms of this Franchise that give rise to the material difference and only to the extent necessary to remove the material difference.

1.5 Relationship to Other Laws.

- (A) Grantee's Franchise is subject to all terms, conditions and provisions of this Franchise Ordinance, of Seattle Municipal Code Chapter 21.60 ("SMC 21.60," or "Cable Communications Ordinance") as the same is now or hereafter amended, of the Communications Act of 1934, as amended by the Cable Consumer Protection Act of 1984, and of the Cable Communications Consumer Protection and Competition Act of 1992, Cable Communications Policy Act of 1994, and Telecommunication Act of 1996 as the same are now or hereafter amended. To the extent that this Franchise and SMC 21.60 are inconsistent, the provisions of this Franchise shall control. The material terms and conditions contained in this Franchise Agreement shall not be altered unilaterally by the City through modification of the Cable Communications Ordinance or any other ordinance, rule, regulation, resolution, or other enactment of the City, except as may be permitted in the lawful exercise of the City's police powers.
- (B) Grantee's Franchise is subject to the Charter of The City of Seattle and to those general ordinance provisions passed pursuant thereto. Unless expressly stated, nothing in this Franchise shall alter any requirements of the existing codes and ordinances of the City, including those relating to pole attachment, street use permits, fees, taxes, consumer protection laws or construction requirements or schedules; provided, nothing herein shall prevent Grantee from challenging the legality of such codes and ordinances or their application to Grantee.
- (C) It is the intent of both parties that each party shall enjoy all rights and be subject to all obligations of this Franchise for the entire term of this Franchise and, to the extent any provisions have continuing effect, after its expiration. However, both parties recognize that the technology of cable television and related technologies are in a state of flux and that regulatory conditions and franchise rights and powers may change drastically during the term of this Franchise. Should such changes occur, the provisions and procedures of Section 20 (Reopeners) shall govern, and the City and Grantee shall negotiate in good faith to amend this Franchise to preserve the rights and obligations of the City and Grantee hereunder to the fullest extent consistent with such changes. The parties agree that the perpetuation of the substantial equivalent of the current statutory and regulatory structure governing cable television is not a condition of this contract, or a fundamental assumption that either party is making in entering into it; provided, however, nothing herein shall prevent either the City or Grantee from asserting that any part or parts of this Franchise are preempted by state or federal law as a result of such changes.

**SECTION 2. CITY'S PRINCIPLES AND INTENT.** The following provisions are statements of the City's intent in entering into this Franchise and shall not supplant or modify any specific provisions of the Franchise:

- 2.1 Provide for the installation and operation of a Cable System with features meeting the current and future cable-related needs and interests of the community.
- 2.2 Encourage the widest feasible scope and diversity of programming and other services to all City residents that is consistent with community needs and interests.
- 2.3 Encourage telecommunications services of all kinds to be offered to City residents on a non-discriminatory basis;
- 2.4 Encourage prompt implementation of technical advances in communications technology;
- 2.5 Provide for ample and fairly allocated access to cable facilities for program producers for government, educational, and public service programming;
- 2.6 Ensure that rates and charges for basic cable programming, equipment, and service are fair, reasonable and consistent with federal standards;
- 2.7 Require that Grantee provide high quality customer service;
- 2.8 Ensure that the installation and maintenance of cable facilities comply with all applicable City regulations, and do not interfere with the City's legitimate use of its own facilities and property;
- 2.9 Encourage competition among cable operators and between cable operators and other providers of communications services on a fair and equitable basis;
- 2.10 Protect the City's interests and the health, safety, and welfare of its citizenry;
- 2.11 Ensure the universal availability of Cable Services within the Franchise Area on a non-discriminatory basis;
- 2.12 Provide for timely mandatory government access to all Cable Systems in times of civil emergency.

**SECTION 3. DEFINITIONS.** For the purpose of this Franchise, and all Exhibits attached hereto, the following terms, phrases, and their derivations shall have the meanings given below unless the context clearly mandates a different interpretation. Where the context so indicates, the present tense shall imply the future tense, words in plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The definitions are applicable regardless of whether the term is capitalized.

- 3.1 "Access" means the right of certain agencies, institutions, organizations, groups and individuals in the community, including the City and its designees, on a non-discriminatory basis, to use the Cable System for specific PEG non-commercial purposes, including the right to acquire Programming, to create Programming free from outside control including that of Grantee, and to distribute and receive Programming over the Cable System and has the same meaning as PEG Access.
- 3.2 "Access Channel" or "PEG Access Channel" means any Channel, or portion thereof, designated for Access and made available by Grantee at no charge.
- 3.3 "Affiliated Entity" means any enterprise that owns or controls Grantee, or is owned or controlled by Grantee, or otherwise has ownership or control in common with Grantee, including, without limitation, Grantee's Parent Corporation and any subsidiaries or affiliates of such Parent Corporation who meet this definition.
- 3.4 "Basic Service" or "Basic Service Tier" means and includes, at a minimum, all signals of domestic television broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system); any public, educational, and governmental programming required by the franchise to be carried on the basic service tier; and any additional video programming signals or service added to the basic service tier by Grantee.
- 3.5 "Buildout" means the permitting, design, construction and activation of a fully operational Cable System throughout the Franchise Area.
- 3.6 "Cable Operator" means any person or group of persons (A) who provides Cable Services over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or, through any arrangement, is responsible for the management and operation of such a Cable System.
- 3.7 "Cable Services" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- 3.8 "Cable System" means all or part of the facility owned, rented, leased or otherwise controlled by Grantee (including plant, facilities, equipment, and closed signal transmission paths, switches, software, hardware, and other processing equipment, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, and any and all conductors, home terminals, converters, remote control units, and all associated equipment or facilities) the purposes of which include distributing Cable Services or Programming or producing, receiving, amplifying, storing, processing, or distributing voice, data, video,

multimedia or other forms of electronic, optical or other signals in the Franchise Area.

- 3.9 "Capital Costs" means the funds expended in connection with the acquisition, installation or construction of equipment, products or other assets the useful life of which is expected to exceed one year.
- 3.10 "Channel" means a radio frequency band capable of carrying combinations of video, audio, digital or other non-video signal. This could include a digitally compressed channel.
- 3.11 "City" means The City of Seattle, a municipal corporation of the State of Washington.
- 3.12 "City Council" means the Council of The City of Seattle.
- 3.13 "Closed Channels" means upstream or downstream channels that are not available for receipt by Subscribers without special equipment or authorization.
- 3.14 "Contracting Officer" means the Director of the Office of Cable Communications.
- 3.15 "Construction of Cable System" means the building of the Cable System as outlined in Section 8.
- 3.16 "Demarcation Point" means the physical point at which the Cable System enters the subscriber's home or building.
- 3.17 "Designated Access Managers" means the entity or entities designated by the City to operate PEG Access Channels.
- 3.18 "Document" or "Records" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including records maintained by computer or other electronic or digital means, maintained by Grantee in the ordinary course of conducting its business.
- 3.19 "Downgrade Charges" means the charges for implementing a request for a change or reduction of Cable Services to less than current services or tiers.
- 3.20 "Downstream Channel" means a Channel capable of carrying a transmission from a Headend to other points on a Cable System, including Interconnection points.
- 3.21 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, designed for residential occupancy and includes "household" as that term is used in the Federal Cable Act, 47 U.S.C. 521, *et seq.* "Dwelling Unit" does not include living facilities or other living units that are not permitted under SMC Title 23. Buildings with more than one set of facilities for cooking are multiple unit buildings unless the additional facilities are clearly accessory.

- 3.22 "Educational Access" means Access for schools and other educational institutions and entities;
- 3.23 "Facility" means any distribution component of a Cable System.
- 3.24 "FCC" means the Federal Communications Commission.
- 3.25 "Fiber Optic" refers to a transmission medium of optical fiber that supports delivery of Cable Services.
- 3.26 "Franchise" means this franchise agreement.
- 3.27 "Franchise Area" means the area within the City set forth in Section 4.
- 3.28 "Government Access" means Access for governmental entities or their designees;
- 3.29 "Grantee's Pro Rata Share" is a fraction the numerator of which is the total number of Grantee's Subscribers calculated on equivalent subscriber basis and the denominator of which is the total number of Subscribers calculated on equivalent subscriber basis of all franchisees in the City.
- 3.30 "Gross Revenues" means, for purposes of franchise fee calculations, all revenue received by Grantee, in whatever form and from all sources, in connection with the operation of Grantee's Cable System, including any revenue received by Grantee from any use of any component of the Cable System for any purpose by the Operator or by others. Gross Revenues shall include, without limitation, revenue received from advertising, from installations, from sales occurring as a result of home shopping or similar programming, from leased channels, and from sales of guides to programming.
- Gross Revenues shall not include revenues received from telecommunications services or revenues received by third parties unless such revenues are of a type normally received by Grantee prior to the date of this Franchise or would normally be received by a cable operator similarly situated in the ordinary course of business as compensation for use of the Cable System. Gross Revenues shall be determined without deduction for (A) any operating expense; (B) any accrual, including, without limitation, any accrual for commissions; or (C) any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment, but revenue shall be counted only once in determining gross revenues. Gross Revenues shall not include funds that Grantee is legally obligated to collect as sales, similar taxes or fees of general applicability.
- 3.31 "Guarantor" means any entity that expressly issues a guaranty of Grantee's performance of any obligation under the Franchise.
- 3.32 "Headend" means a facility for signal reception and/or dissemination on the Cable System, including all related equipment, such as cable, antennas and wires, satellite dishes, monitors, switchers, modulators, computers, software, processors

for television broadcast signals, equipment for the Interconnection of Grantee's Cable System with adjacent cable systems and for Interconnection of any separate networks which are part of Grantee's Cable System.

- 3.33 "Initial" or "Initially" means as of the effective date of this Franchise.
- 3.34 "Interconnect," "Interconnected," or "Interconnection" means the provision of an electronic linkage between Grantee's Cable System and Cable Services or any part, designated Channel or signal pathway thereof and any other designated Cable System and Cable Services or any part, designated Channel or signal pathway thereof, with the result that Cable Services of high technical quality may be transmitted between such Cable Systems or Programmers.
- 3.35 "Leased Access Channel" means a Channel or portion of a Channel made available by Grantee for Programming by others for a fee.
- 3.36 "Liquidated Damages" means any requirement imposed on Grantee to pay specified sums to the City as a result of performance deficiencies identified herein.
- 3.37 "Normal Business Hours" means the hours from 8:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 5:00 p.m., Saturday, excluding legal holidays.
- 3.38 "Normal Operating Conditions" means service conditions within the control of Grantee. Those conditions that are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, labor strikes or other job actions, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
- 3.39 "Parent Corporation" means Western Integrated Networks, LLC, a Delaware limited liability company, and includes any other existing or future entities with greater than fifty percent (50%) ownership or control over Grantee.
- 3.40 "PEG Access" means Public Access, Educational Access, and Government Access, jointly or severally, and has the same meaning as "Access".
- 3.41 "Person" means any sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Washington, and any natural person.
- 3.42 "Programmer" means any Person who prepares, produces or provides Programming that is intended for transmission on a Cable System.
- 3.43 "Programming" means the video, audio, voice, data, multimedia or other material or programs prepared for or capable of transmission on a Cable System, or, as the

context requires, the process of causing such material to be created, received, transmitted or distributed on a Cable System.

- 3.44 "Public Access" means Access for the public, including organizations, groups and individuals.
- 3.45 "Puget Sound Region," or "Region," or "Regional" means the geographic area of King, Pierce, and Snohomish counties.
- 3.46 "Rebuild" means to upgrade the Cable System.
- 3.47 "Right of Way" means the surface of and the space alongside, above and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement and road right-of-way held or administered by the City.
- 3.48 "School" means any public educational institution accredited by the State of Washington, including primary and secondary schools (K-12), colleges and universities.
- 3.49 "Service Interruption" means any loss of any element of programming on any part of the Cable System.
- 3.50 "Subscriber" means any Person who is lawfully receiving, for any purpose or reason, any Cable Service whether or not a fee is paid, including each such person in a multiple unit building, except for purposes of reporting or cost allocation, where equivalent subscriber basis may be used.
- 3.51 "Tier" means Programming Services offered by Grantee to Subscribers as a package.
- 3.52 "Upgrade" means an improvement in any technical aspect of a Cable System.
- 3.53 "Upstream Channel" means a Channel capable of carrying a transmission to a Headend from any other point on a Cable System including Interconnection points.

#### **SECTION 4. FRANCHISE AREA.**

- 4.1 Franchise Area. Grantee shall provide Cable Services, as authorized under this Franchise, within the City-wide franchise district authorized by SMC 21.60.080 including any annexations.

#### **SECTION 5. PROGRAMMING AND CHANNEL CAPACITY.**

- 5.1 Grantee Compliance. Grantee shall meet or exceed the Programming and Channel capacity requirements set forth in this Franchise.



5.2 Expanded Programming and Channel Capacity. Beginning no later than the date on which the entire Cable System is to be activated, or, if activated in phases at Grantee's discretion, then when each phase is activated, Grantee shall provide:

- (A) Activation of a minimum Downstream Channel capacity of 70 activated Channels to all Subscribers.
- (B) Closed Channels in sufficient number and technical quality to permit the implementation of the Closed Channel requirements of the Franchise.
- (C) In addition to Programming provided on PEG channels and local off-air broadcast channels, if any, Grantee shall provide the following broad categories of Programming:
  - (1) Education
  - (2) News & information
  - (3) Sports
  - (4) Cultural and performing arts
  - (5) Government affairs
  - (6) Weather
  - (7) Programming addressed to diverse ethnic and minority interests
  - (8) Audio programming (including a selection of local FM radio stations)
  - (9) Business news
  - (10) General entertainment (including but not limited to movies)
  - (11) Children's programming
  - (12) Family programming
  - (13) Science/documentary
  - (14) Canadian programming

The requirements for each category of Programming may be satisfied by providing a separate Channel devoted substantially to the category or by Programming from more than one (1) Channel which in the aggregate totals the equivalent of a Channel devoted substantially to the category.

5.3 Ascertainment Process.

- (A) The City, not more frequently than twice during the term of this Franchise, shall arrange and pay for a systematic ascertainment of the community's views regarding the nature and adequacy of Grantee's performance of this Franchise, and of the needs and interests of the community and preferences of subscribers regarding this Franchise. A written summary of the findings made by such an ascertainment, which shall be conducted by an independent entity using generally accepted market research techniques, shall be provided to Grantee. Such summary shall include a description of the methodology used.

Within 30 days of the delivery of such summary, Grantee shall pay to the City, in addition to all other fees and charges due under this Franchise, the costs incurred by City in performing such ascertainment and procuring summary or \$1.00 per subscriber whichever is less. In the event such ascertainment process and summary is conducted jointly in connection with similar ascertainments of other Cable Service franchisees, then Grantee's obligation shall be its prorated share of the costs or \$1.00 per subscriber, whichever is less.

- 5.4 Deletion or Reduction of Programming Categories. Grantee shall not delete or so limit as to effectively delete any broad category of Programming within its control for any group of subscribers without the City's consent, which shall not be unreasonably withheld, and shall provide at least 30 days' prior written notice to the City of Grantee's request to do so, including all proposed changes in bandwidth or channel allocation, and any assignments including any new equipment requirements that may occur as a result of these changes.
- 5.5 Obscenity. Grantee shall not transmit, or permit to be transmitted, over any Channel any Programming which is obscene in the sense that the Programming is not protected speech under the Constitution of the United States. Grantee shall adopt a written policy prohibiting obscene programming. This Section shall not apply to Internet transmissions.
- 5.6 Parental Control Device. Upon request by any Subscriber, Grantee shall make available at Grantee's actual cost a parental control or manual non-electronic lockout device compatible with the Subscriber's equipment that will enable the Subscriber to block access to any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of the original subscription and annually thereafter, and if requested by the Subscriber, shall provide the device at the time of the original installation.
- 5.7 Leased Access Channels. Leased access channels shall be provided in accordance with federal law.

## **SECTION 6. PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS.**

6.1 PEG Channel Capacity. Grantee shall provide Public Educational and Government (PEG) access channels as specified in this section.

- (A) Initial PEG Channel Capacity. Grantee shall make available ten (10) PEG analog channels of 6 megahertz bandwidth each to be allocated in the following manner: two (2) Public, six (6) Educational and two (2) Government Access on the date Grantee first provides Cable Services in the Franchise area. The 10 PEG channels shall serve as the initial PEG channel requirement. At the City's request, one of the Government Access Channels shall be cablecast throughout King County provided and to the extent Grantee is serving that area. Provided that all other cable franchisees are similarly obligated and if it involves no additional cost to Grantee, then, at the request of the Designated Access Manager, one of the Public Access Channels shall also be cablecast throughout the same area, except where another jurisdiction requests that it not be cablecast.
- (B) Additional PEG Channel Capacity. Grantee shall also provide, at the City's request, up to eleven (11) additional Public, Educational and Government Access Channels as specified herein. Allocation of all additional PEG channels shall be at the sole discretion of the City. Of these additional PEG channels, a maximum of three (3) PEG may be required as 6 megahertz analog channels. These channels shall be made available on 180 days notice from the City that programming is available from a PEG access manager and when the City has made a reasonable determination that there is a need for such additional programming. TVW shall be considered a PEG channel under this Franchise.

The remaining eight (8) additional PEG channels may be provided as digital channels and shall have bandwidth comparable to the other video programming channels provided to subscribers. Grantee shall provide the additional digital channels within 6 months of the City's demonstrated need for such channels pursuant to Section 6.1(C). Recognizing that there may be a transition period during the term of this franchise when signals can be provided in digital and analog formats, the City may request that Grantee replicate PEG content provided on any of the analog channels on such digital channels. No additional channels provided pursuant to this section shall supplant existing Programming within any of the categories set forth in Section 5. In no event shall the total number of PEG channels required to be made available by Grantee exceed the number of PEG channels required of any other cable franchisee.

- (C) Triggers for Added Channels. The City may require the Grantee to provide additional activated Channel capacity for the following types of PEG Access when the following conditions are met:
- (1) Public Access Channels: During 16 consecutive weeks, the Public Access Channels are in use for programming 80% of the time exclusive of re-runs, Monday through Friday, during the hours of 11:00 a.m. to 11:00 p.m.
  - (2) Educational Access Channels: During 16 consecutive weeks, the Educational Access Channels are in use for Programming 70% of the time, five days per week, Monday through Friday, during the hours 9:00 a.m. to 3:00 p.m. Re-runs shown more frequently than similar shows were rerun in calendar year 2001 shall not count in making this determination.
  - (3) Government Access Channels: During 16 consecutive weeks, the Government Access Channels are in use for Programming (a) 80% of the time, Monday through Friday, during the hours 6:00 p.m. to 11:00 p.m., or (b) 70% of the time Monday through Friday, during the hours 9:00 a.m. to 12 noon, or 1:30 p.m. to 4:00 p.m. Re-runs shown more frequently than similar shows were rerun in calendar year 2001 shall not count in making this determination.

6.2 Access Channel Assignments. Channel assignments for PEG Access Channels shall be determined in accordance with the criteria listed below.

- (A) PEG Access Channels shall be assigned so that they are the same on all City franchises and, to the extent feasible, other franchises adjacent to Grantee's Cable System. PEG channels existing at the time that Grantee activates its cable system shall be placed on the same channel numbers as they are on the dominant cable provider's system, unless legally or technically infeasible (for example, if locations are preempted by federal must carry rules.)
- (B) Nothing in this section shall limit Grantee, Designated Access Managers, or other cable franchisees from agreeing upon other Channel assignments.
- (C) Except as otherwise agreed by the City, all analog PEG Access channels shall remain on the lowest tier of Cable Service offered by Grantee on its Cable System.
- (D) Grantee shall cooperate with the City, Designated PEG Access managers, and other cable franchisees to establish common, logically-related

Channel assignments for the additional PEG Access channels in accordance with this Section.

6.3 Access Interconnections.

- (A) Grantee shall work with the City, other cable franchisees and Designated Access Managers to establish and coordinate City-wide Access Channel assignments and Interconnected PEG Access Channels. If the City and Grantee and other cable franchisees are unable to agree, the matter shall be submitted to arbitration under Section 21.
- (B) Grantee shall insure that signal quality comparable to that available on the subscriber network and routing systems is provided continuously for all Access Interconnections throughout the duration of this franchise.
- (C) PEG channels will be Interconnected with contiguous franchises in King, Snohomish and Pierce Counties at the City's discretion and cost, if technically feasible.

6.4 Change in Technology.

- (A) Interactivity. The City shall have the right to require interactivity on two (2) of the PEG Channels made available in Paragraph 6.1 above, as designated by the City when thirty percent (30%) of Grantee's Subscribers subscribe to such services, upon demonstrating need for such changes, and pursuant to the procedures set forth in Section 6.4 (B). Interactivity means two way communication using the Cable System in which the Subscriber interacts with the program being viewed, but does not include merely ordering and receiving pay-per-view or videogame services, internet access services or any telecommunications services.
- (B) Digitization of Analog Channels. The City may require Grantee to digitally compress one or more of the PEG Access Channels at or after the time that Grantee converts a majority of the local broadcast channels carried on its Cable System to compressed digital transmission. In the event Grantee reasonably determines that any such conversion the City may request is not economically or technically feasible, Grantee may invoke the procedure of Section 20 in lieu of immediate compliance, in which event the burden shall be on Grantee to demonstrate that such conversion is not technically or economically feasible. Grantee may, at its own discretion, move analog PEG channels to a digital format, if and when all subscribers who wish to receive the channels already have the necessary equipment. In the event Grantee converts any of the 10 initial analog PEG channels to the digital format, the City shall retain the 6 MHz

bandwidth capacity of each initial PEG channel so converted for future use for PEG purposes.

6.5 Technical Quality. Grantee shall maintain all Upstream and Downstream and Closed Access Channels and Interconnections of Access Channels at the level of technical quality and reliability required by this Franchise and all other applicable laws, rules and regulations or at the same level of quality as comparable Subscriber Channels, whichever is higher.

6.6 Designated PEG Access Managers.

- (A) The City shall name Designated Access Managers for Public, Education, and Governmental (PEG) Access programming. The Designated Access Managers shall have sole responsibility for operating and managing their respective Access Channels.
- (B) Grantee shall cooperate with Designated PEG Access Managers and providers and facilitate their use of Grantee's Cable System and Programming of PEG Access channels. Grantee shall enter into such operating agreements with Designated PEG Access Managers as are appropriate to meet PEG Access requirements of this Franchise.

- 6.7 Video Feeds. Grantee shall install for the City's use and at no cost to the City, upstream video feeds from no more than fifteen (15) locations designated by the City, provided such locations are within Grantee's service area and located within 150 feet of Grantee's Cable System, to either Grantee's headend or other connection point capable of transmitting a video signal to the City's TV facility ("Video Feeds"). Grantee shall also provide and install, for the City's use and at no cost to the City, any equipment reasonably necessary for the City to transmit signals via the Video Feeds. Grantee's obligation to install such a Video Feed shall not take effect until 90 days after completion of construction in the service area in which the City requests the Video Feeds. Grantee shall cooperate with the City to facilitate connections to other PEG channel production facilities. Provided, however, nothing herein shall obligate Grantee to expend any additional funds over and above those required to provide video feeds from the 15 locations set forth herein
- 6.8 Internet Service for Public Access. Solely for the purpose of providing public access to the Internet, Grantee shall provide Internet service no more than 25 public sites designated by the City.
- 6.9 PEG Funding and Promotion.
- (A) Grantee shall pay \$545,000 to the City for government access facilities and services, according to the following schedule:
- |                   |          |
|-------------------|----------|
| December 31, 2002 | \$90,000 |
| December 31, 2003 | \$90,000 |
| December 31, 2004 | \$90,000 |
| December 31, 2005 | \$90,000 |
| December 31, 2006 | \$90,000 |
| December 31, 2007 | \$95,000 |
- (B) For the purpose of Public Access television, upon activation of Grantee's first Subscriber and in partial fulfillment of PEG obligations, as provided in this Franchise, Grantee shall pay \$25,000 annually to the City, or a per subscriber charge, established by ordinance, not to exceed \$0.50 per subscriber per month, whichever is greater, provided, that Grantee's total obligation under this paragraph shall not exceed \$200,000 per year for any year through 2005 or the termination date of any extended or renewed

franchise of any existing franchisee, which extension or renewal does not contain the same obligation as is set forth in this section, whichever later occurs, unless Grantees' share of the market for Cable Services in the City shall exceed 33% at which time Grantee's total obligation shall not be so limited. The initial charge shall be \$0.40 per subscriber per month.

- 6.10 Cost Treatment of PEG Costs. The costs associated with the per subscriber charges in 6.9(B) and 11.5 that Grantee incurs to meet the requirements of this Section 6 may be deemed to be an external cost for rate regulation purposes, and may be recovered from Subscribers in monthly subscriber charges at the discretion of Grantee, but shall not be offset against any sums due the City as a tax, franchise fee or otherwise, regardless of whether the combination of franchise fees and said costs exceeds 5% of Grantee's Gross Revenues in any 12-month period.
- 6.11 Survey Data. Grantee will share with the City any data it obtains about PEG channel viewership and demographics.



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## **SECTION 7. GENERAL CABLE SYSTEM REQUIREMENTS.**

- 7.1 Introduction. The cable system shall include facilities and equipment that will deliver the levels of service described below. The cable system shall be designed to facilitate expansion of coverage and services.
- 7.2 Cable Modem Service. The City and Grantee do not agree as to the regulatory treatment of Cable Modem Service as a Telecommunications Service. Grantee and the City agree to the following principles with respect to the Cable Modem Service to further the City's declared interest in encouraging connectivity, interoperability, and openness among Internet resources. Grantee shall ensure that the high-speed Internet access services provided over Grantee's cable system in Seattle will conform substantially with the following standards:
- (A) The high speed Internet access platform will maintain currency with standards for interoperability with Internet protocol applications.
  - (B) Subscribers to the high speed Internet access service affiliated with Grantee will be able to reach any and all information on the Internet and will be able to choose to reach information from other sources and through other Internet service providers and on line access providers without viewing content provided by the affiliated high speed Internet access service provider, as long as said other internet service providers agree to

either directly connect to Grantee's network or their systems are publicly accessible over the common Internet or peering arrangements are made in carrier hotels between said other internet service providers and Grantee.

- (C) A data network backbone connection will be made to an in-region network access point (commonly referred to as a "carrier hotel,") and interconnection arrangements will be made with local educational and governmental information sources through a coordinated non-profit interconnection point, currently located in the Westin Building, if available. Similar interconnection relationships with other Internet service providers and on-line service providers will be established at a suitable interconnection point or points under reasonable terms and conditions acceptable to both parties. Additional backbone connectivity to other national data network backbone providers will be established through interconnection at other backbone connection points within the region, under reasonable terms and conditions acceptable to all parties, including without limitation, requirements that the connecting entity provide its own transport and other necessary equipment.
- (D) Grantee agrees that the obligations set forth in Section 7.2 may be reopened for resolution under the same procedures for reopening and resolving franchise issues under Sections 20.2 and 203 of the Franchise Agreement upon any of the following occurrences:
  - (1) If the high speed Internet access service fails to substantially conform with stated standards;
  - (2) If federal law relating to cable modem Internet services is modified by actions of Congress, the Federal Communications Commission or a court of final jurisdiction, imposing substantially different standards on or affecting the authority of franchising authorities;
  - (3) If any other comparable cable system owned by Grantee offers direct access to broadband cable modem technology by unaffiliated Internet service providers or on-line service providers on other than a temporary test basis and such offering is not available in the City;
  - (4) Upon request of Grantee or the City, to address changes in the law, technology, or the market for high-speed Internet access, that affect the goals of connectivity, interoperability, and openness;
  - (5) Upon mutual agreement of the City and Grantee.
- (E) The City shall maintain its police power role regarding consumer protection provided that the Cable Modem Service is not subject to the direct regulation of customer service issues by either the Federal

Communications Commission or the Washington Utilities and Transportation Commission.

- (F) For purposes of Utility Tax classification purposes, the Cable Modem Service shall be considered a Network Telephone Service and treated as a telecommunications service.

### 7.3 Cable Plant Topography.

- (A) Primary Processing Center. A Primary Processing Center will contain a CATV head end, telephone and data switching facilities used to originate and receive communication and entertainment services, and transmit analog and digital signals over the network.
- (B) Primary Hubs. Primary Hubs will be built around the primary metropolitan ring to serve approximately 32,000 homes. Each center will include fiber management equipment, ATM routers and cable modem equipment. Distribution/Transport Rings will originate at the primary hubs and feed Remote Terminals.
- (C) Remote Terminals. Remote Terminals serve 1,000 home clusters and will have standby battery electrical powering equipment. Network IP services will be delivered directly to each home via fiber. Video services will be presented to viewers via a hybrid fiber coaxial cable system.
- (D) Video Nodes. The Video Nodes will serve as the optical to electric conversion point for video services. They will receive forward optical signals over the fiber optic cable, convert them into electrical radio frequency (RF) signals and transmit them over the coaxial cable into the home. The Video Node will also convert upstream RF signals from in-home set-top boxes into optical signals for delivery to the Remote Terminal and, in turn, to the head end or primary processing center. Video Nodes are small units, and will typically be mounted in apartment building stairwells, on cable strands, or in a pedestal cabinet.
- (E) Coaxial Cable to the Home. Signals will be converted from optical to electrical RF at the Video Node and carried on coaxial cable into the home or business.
- (F) Fiber to the Home. IP voice and data traffic will flow bi-directionally from each home on dedicated fiber strands to the diversely routed, redundant metropolitan and distribution rings.

### 7.4 Headend. Grantee's Headend will be housed in an environmentally hardened building, with sufficient air conditioning and power conditioning equipment both for short-term and long-term equipment installation. Standby-powering will be installed of sufficient size to be able to provide a continuous supply of electricity in the event of loss of commercial power.

- 7.5 Upgrade to Maintain Technological Currency. At the City's request upon the showing required pursuant to Section 7.6 and subject to the procedures of Section 20, the Cable System, and any affected component thereof, shall be upgraded during the term of this Franchise to maintain a condition of technological currency. If such an upgrade is required, the term of this Franchise shall be extended an additional seven (7) years from the date the upgrade is ordered or the date the requirement is finally upheld under the procedures of Section 21, whichever is later, and the appropriate costs of the upgrade shall be deemed external costs passed directly to Subscribers for rate regulation purposes, both at Grantee's option.
- 7.6 Technical Upgrade Procedure.
- (A) At any time after the fifth year of the term of this Franchise the City may require a technical upgrade of the Cable System upon the following showing:
- (1) that the upgrade is commercially practicable considering the remaining term of Grantee's franchise and considering Grantee's ability to recoup the costs of such upgrade plus a reasonable rate of return on such upgrade investment, provided that the City may extend this franchise to allow such recoupment; and
  - (2) that the requirement for such upgrade is uniformly applied to all of the City's cable service franchisees; and, either
  - (3) that at least thirty percent (30%) of the comparable cable systems owned or operated by Grantee's Affiliated Entities have upgraded their capacity to a material degree beyond that of Grantee's Cable System; or
  - (4) that there is a material disparity between the level of service and capacity of Grantee's Cable System and that of a significant number of other comparable systems using technology generally available in the City, and that there is a demonstrable need and public interest to be served by the upgrade.
- (B) The City may conduct an inquiry to determine whether the required showing can be made. Grantee shall cooperate with the City in the investigation and provide information, including, if reasonably available, estimated general cost figures, technical specifications, and equipment specifications that may assist such an undertaking.
- (C) Grantee acknowledges and agrees that the City's investigation may include information not provided by Grantee, and that the City may commission third parties, as necessary, to ascertain facts in support of either showing.

The public may also be invited to comment on the technical currency of Grantee's system.

- (D) In the event the City's investigation indicates that a technical upgrade may be necessary under the required showing, the City may invoke the provisions and procedures of Section 20 to determine whether and to what extent an upgrade of the system is required.

7.7 System Reliability and Performance. Grantee's system will meet or exceed FCC technical standards, as amended from time to time. Grantee's cable system will be backed up with an average of four (4) hours standby power at each node and at such cable plant that is contiguous to such node. The cable system powering will be monitored, and crews will be dispatched in the event of loss of commercial power. In the event that the system cables or fiber optic lines are severed, Grantee will respond within an average of two (2) hours and will correct all such outages, within its control, within 24 hours.

7.8 System Capacity and Features. Grantee's system will have the following capacity and features:

(A) DOWNSTREAM:

Frequency Spectrum: 54-750 MHz.

Channel Capacity: At least 70 channels.

(B) UPSTREAM:

Frequency Spectrum: 5-40 MHz.

Channel Capacity: 4 N.T.S.C. video channels.

Grantee's system will be two (2)-way capable to the home. Grantee may activate two (2)-way services as determined by Grantee.

7.9 Subscriber Equipment Interface and Control. Grantee will comply with the FCC's standard on equipment compatibility.

7.10 Emergency Alert System. When technically feasible, Grantee shall implement a system for providing restricted audio override of all audio, and interrupt of all video Channels, during emergencies, with override to be placed under the City's control, in compliance with FCC Rules. The emergency alert system shall provide for activation from the Mayor's office and/or the City's emergency operations center, with coded access for both audio and video messages. Upon request by the City, Grantee shall cooperate with the City to test the emergency override system, for periods not to exceed one (1) minute in duration and not more than once every six (6) months. Notwithstanding the foregoing, FCC Rules

governing emergency alert systems shall take precedence if in conflict with this Section.

## **SECTION 8. CONSTRUCTION PROCEDURES.**

- 8.1 Cable System Construction Timeframe. Grantee will complete its construction of the Cable System, within 84 months from the effective date of Franchise, excluding delays reasonably beyond Grantee's control. Grantee will substantially complete and have in operation not less than ten percent (10%) of the Cable System within the first twenty-four (24) months from the effective date, an additional ten percent (10%) within the first 36 months from the effective date, and an additional 20 percent (20%) per year for each of the next succeeding 12 month periods thereafter.
- 8.2 Construction Plan and Practices Submittals and Approvals. Grantee will submit a current copy of its applicable construction procedures and fiber optics manuals to the City, upon request. Grantee will supply copies of these manuals to all contractors and ensure through routine inspections that all contractors comply with such practices. Grantee will provide periodic updates of its construction plans to the City.
- 8.3 Compliance With Construction and Safety Standards. Grantee will construct the Cable System using applicable City codes and the following safety codes and construction standards in its construction practices:
- NEC - National Electrical Code;
- NESC - National Electrical Safety Code;
- OSHA - Occupational Safety and Health Act;
- WISHA - Washington Industrial Safety and Health Act.
- 8.4 Workmanship. Grantee will construct the Cable System in a workmanlike manner, consistent with Sections 13.5(A) and (B).
- 8.5 Construction and Work Permits, Licenses and Permission. Grantee agrees to file for and secure any necessary permits and/or licenses prior to commencement of any activity in any Rights-of-Way.
- 8.6 Construction Area Safety and Cleanup. Grantee agrees to inspect its contractor(s) on a regular basis and ensure that both its personnel and contractor(s) provide clean-up of all workplaces and adhere to industry safety as well as, all State and local safety standards.
- 8.7 Component and System Tests, Records and Test Points. Grantee will initially test all active components before installation into the system. Initial proof-of-performance will meet or exceed the minimum requirement set forth in

FCC Rules & Regulations Part 76, SubPart K "Technical Standards." There will be a test point located at the extremities of each node.

8.8 Service Connections.

- (A) Standard Installation - Unwired Dwelling Unit. Standard installation of an unwired Dwelling Unit shall be installation of cable service to the Subscriber's Dwelling Unit located up to 125 feet from the Subscriber's property line nearest to the Grantee's distribution system when constructed, plus additional inside wire and at least one outlet sufficient to receive Cable Services.
- (B) Standard Installation - Prewired Dwelling Unit. Standard installation of a prewired Dwelling Unit shall be installation of cable service to the Demarcation Point located on the Subscriber's property up to 125 feet from the Subscriber's property line nearest to the Grantee's distribution system, sufficient to receive Cable Services and where the prewired equipment will allow the cable system to meet all FCC technical requirements.
- (C) Non-Standard Installations. Any installation of cable service that requires either the installation of facilities from a point more than 125 feet from the Subscriber's property line nearest to the Grantee's distribution system, or requires the installation of interior wiring outside of the dwelling unit, to reach:: (1) in the case of a prewired Dwelling Unit, the Demarcation Point; or (2) in the case of an unwired Dwelling Unit, a point not less than 12 inches from the exterior wall of the Dwelling Unit; or (3) any underground installation in an area where plant facilities are not underground; or (4) any installation calling for multiple outlets in a Dwelling Unit; shall be considered a Non-standard Installation.
- (D) Rates and Charges. Charges for Standard Installations may not exceed Grantee's published rates. Charges for Non-standard Installations shall not exceed Grantee's published charge for non-standard transactions, and may be applied only to that portion of the installation defined as a Non-standard Installation in Subsection (C) above.

**SECTION 9. TECHNICAL OPERATION AND MAINTENANCE STANDARDS AND REQUIREMENTS.**

- 9.1 Technical and Safety Standards. Grantee will maintain the Cable System in compliance with applicable City codes and the following safety codes and construction standards:

NEC - National Electrical Code;

NESC - National Electrical Safety Code;

OSHA - Occupational Safety and Health Act;

WISHA - Washington Industrial Safety and Health Act.

- 9.2 Network Monitoring and Repair. Grantee shall monitor all power supplies and fiber nodes, utilizing the latest in status monitoring techniques and will effect repairs within a 24-hour time period as required by applicable FCC Rules and Regulations.
- 9.3 Routine Maintenance and Performance Testing. Grantee will maintain the Cable System by providing routine maintenance and performance testing to meet the requirements of FCC Rules and Regulations; Part 76, including biannual proof of performance tests.
- 9.4 Spare Parts. Grantee shall have immediately available a sufficient supply of spare parts to effect repairs in accordance with the requirements of this Franchise.

## **SECTION 10. SUBSCRIBER RELATIONS AND SERVICE STANDARDS COMPLAINT PROCEDURE.**

### **10.1 Office Hours and Telephone Availability.**

- (A) Beginning not later than 12 months after the effective date of this Franchise or the date on which Grantee begins operating its Cable System, whichever is sooner, Grantee shall maintain a local or toll-free call telephone subscriber service access number which will be available to its Subscribers 24 hours a day, seven (7) days a week.
- (B) Trained company representatives shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.
- (C) After Normal Business Hours, the subscriber service access number may be answered by an answering service, automated response system or an answering machine. A qualified Grantee representative shall respond on the next business day to inquiries received after Normal Business Hours.
- (D) Under Normal Operating Conditions, telephone answer time by a subscriber representative, including wait time, shall not exceed 30 seconds after the connection is made. If the call must be transferred, transfer time shall not exceed 30 seconds. These standards shall be met not less than ninety percent (90%) of the time under Normal Operating Conditions, as measured on a quarterly basis.
- (E) Under Normal Operating Conditions, the subscriber shall receive a busy signal less than three percent (3%) of the time.
- (F) Grantee shall maintain a file of all Subscriber complaints not resolved by phone that is available for City inspection. The file will include subject of



complaint, how it was resolved, when it was resolved, and any additional action taken by caller or Grantee. In addition, the City may order periodic sampling of the number and general categories of complaints resolved by phone during the sampling period, not to exceed five (5) days per quarter.

- (G) Beginning not later than 12 months after the effective date of this Franchise or the date on which Grantee begins operating its Cable System, whichever is sooner, Grantee shall establish at least one of two (2) Subscriber Service Centers for pick up and return of equipment and payment of bills. The Subscriber Service Centers and any other bill payment locations shall be open at least during Normal Business Hours and shall be conveniently located at safe, visible sites within the City, one located north and one located south of the Ship Canal. The Subscriber Service Centers shall be handicapped accessible and located in close proximity to mass transit routes. Grantee shall establish the second of these Service Centers on or before the 60<sup>th</sup> month after the effective date of Franchise.

10.2 Installations, and Subscriber Service Calls. Under Normal Operating Conditions, each of the following standards shall be met not less than ninety-five percent (95%) of the time measured on a quarterly basis.

- (A) Standard Installations for Dwelling Units shall be performed within seven (7) business days after an order has been placed, unless otherwise requested by Subscriber, except where excavation permits are required to serve such Subscriber, and in that event, within 7 days after an excavation permit is issued.
- (B) The "appointment window" alternatives for installations, service calls, and other activities shall be, at maximum, within a four (4)-hour block during Normal Business Hours. Grantee may schedule service calls and other installation activities outside Normal Business Hours at the request of and for the convenience of the Subscriber.
- (C) Grantee may not cancel an appointment with a Subscriber after the close of business the day before the appointment unless Grantee is prevented from making the appointment by any condition outside its control. In the event cancellation occurs, the appointment must be rescheduled in accordance with Section 10.2(D).
- (D) If a representative of Grantee will not be able to keep an appointment, Grantee shall reschedule the appointment at a time convenient for the Subscriber.
- (E) If the signal on any Cable Channel is below FCC technical standards for more than two (2) weeks, Grantee shall provide upon the Subscriber's request a proportionate rebate for the entire period that the Cable channel

is below FCC technical standards. Grantee shall, upon the Subscriber's request, provide a credit of one (1) day's cable service for each outage within Grantee's control lasting more than four hours in any 24-hour period.

- (F) If a Subscriber requests disconnection of any or all services, billing for affected services shall end on the day requested by the Subscriber. The Subscriber shall not be responsible for Cable Services delivered after the requested end date. Grantee must refund any credit balance owed the Subscriber, less any owed or disputed amounts, within 15 business days after the close of the Subscriber's billing cycle following the return of the equipment and request for disconnection.
- (G) Grantee shall provide Subscribers with at least 24 hours' advance notice of planned service interruptions anticipated to last more than four hours. Planned service interruptions shall occur only during periods of minimal use of system and shall not occur except for good cause.

### 10.3 Communications Between Grantee and Subscribers.

- (A) Identification. Subscriber service representatives shall appropriately identify themselves. Field representatives shall provide Grantee-issued picture identification and, upon request, means of verification.
- (B) Notifications to Subscribers.
  - (1) Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscriber's Dwelling Units, and at any time upon request:
    - (a) products and services offered;
    - (b) prices and options for Programming services, conditions of subscription to Programming and other services and policies concerning changes in services offered, notification of changes, disconnection and service downgrades;
    - (c) installation and service maintenance policies, including the Subscribers' responsibilities for equipment;
    - (d) instructions on the use of Cable Services;
    - (e) channel positions of Programming;
    - (f) billing and complaint procedures, including the address and telephone number of Grantee's cable office, Grantee's policies on deposits and credit balances, returned check

charges, refunds for disruption of service or poor reception, and the address and telephone number and description of services of the cable office of the City of Seattle.

(g) policies concerning protection of Subscribers' privacy.

- (2) Subscribers shall be notified of any changes in Programming, services or channel positions as soon as possible in writing and, when it becomes technologically feasible, through announcements on the Cable System. Subscribers shall be given a description of the changes, their options (including costs) for changing services they receive, phone number for questions and effective date. Notice must be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of Grantee. In addition, Grantee shall notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding Subsection.
- (3) Affected Subscribers shall have 30 days after a change in services or rates to downgrade their service without charge.
- (4) All promotional materials advertising Cable Services shall accurately disclose price Grantee's terms. Grantee's subscriber service representatives shall make the price of pay-per-view and pay-per-event Programming clear before an order is manually taken. Grantee shall distribute collateral/promotional material in multi-unit buildings only with the approval of the building owner or manager. Grantee shall not condition the provision of Cable Services on the receipt of such approval.
- (5) Grantee shall not charge Subscribers for any services they have not affirmatively requested; provided, this Subsection shall not prevent adding Programming to an existing tier.

(C) Billing.

- (1) Bills shall be clear, concise and understandable. Bills may be fully itemized to the extent allowed by law and this Franchise, provided that all bills shall clearly reflect only a single total amount due. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. Franchise fees, costs and taxes shall be itemized in a manner that accurately and fairly portrays the basis for the taxes and fees.
- (2) In case of a billing dispute, Grantee shall respond within 20 days. The first response to a specific complaint may be oral if provided within ten (10) days, and if subsequent responses to the same

complaint are in writing. Grantee shall also provide a written response when specifically requested by the Subscriber.

- (3) Bills shall not be past due sooner than 30 days after the date of mailing. The closing date of the billing cycle shall be shown on the bill.
- (D) Refunds. Refund checks shall be issued promptly, as provided in Section 10.2(F).
- (E) Credits. Credits for service shall be issued no later than the Subscriber's next billing cycle or 30 days after the determination that a credit is warranted, whichever is sooner.
- (F) Delinquent Account Disconnection. Grantee shall send written disconnect notices, which may be included in the bill if visually distinct from the rest of the bill, clearly stating the amount past due that must be paid to avoid disconnection, the total amount due, and the Customer Service phone number. If the Subscriber does not respond, Grantee may disconnect the Subscriber ten (10) days after the disconnect notice is sent.
- (G) Deposits. Deposits shall accrue interest at a fair market rate. Within ten (10) days after termination of service, Grantee shall repay any deposit with a statement showing accrued interest to the subscriber, less any sums owed to Grantee.

#### 10.4 Subscriber Rights.

- (A) Discrimination Prohibited. Grantee shall comply at all times with all applicable laws, rules, and regulations including the terms of the Franchise relating to non-discrimination.
  - (1) All Grantee rates and charges shall be published and non-discriminatory. Except as provided hereunder, Grantee shall establish similar rates and charges for all Subscribers receiving similar services, regardless of type of Dwelling Unit, race, color, religion, age, sex, marital or economic status, national origin, sexual orientation, gender identity, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within Grantee's Franchise Area. Nothing in this Section shall be construed to prohibit the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns or discounted rates for provision of Cable Services to multiple unit buildings.
  - (2) Grantee shall not deny Cable Service, or otherwise discriminate against Subscribers, Access Programmers or any other Persons on the basis of type of Dwelling Unit, race, color, religion, age, sex,

marital or economic status, national origin, sexual orientation, gender identity, political ideology, creed, ancestry; the presence of any sensory, mental or physical handicap; or geographic location within Grantee's Franchise Area.

- (3) Grantee shall not take any retaliatory action against a Subscriber because of the Subscriber's exercise of any right it may have under federal, state, or local law, nor may Grantee require a Subscriber to waive such rights as a condition of service.

(B) Privacy.

- (1) Grantee agrees that any disclosure of subscriber information to third parties for non-cable related purposes that is otherwise consistent with federal law and this Franchise will not directly or indirectly reference any individual Subscriber viewing preference for, or the extent of the Subscriber's viewing of, particular services. This subsection shall not be construed to prohibit references to programming tiers, such as basic, expanded basic, pay programming (including the number of pay channels selected), digital services, aggregate monthly revenues collected, and other general descriptions of cable services that do not directly or indirectly disclose individual Subscriber viewing preferences for, or the extent of an individual Subscriber's viewing of, particular services. Further, this subsection may not be construed to prohibit other disclosures made pursuant to a valid court order authorizing such disclosure consistent with federal law.
- (2) Grantee shall not observe or record, or allow any third party to observe or record, the viewing habits or communications of Subscribers over the Cable System. Grantee shall not reveal to any third party which Cable Services an individual Subscriber receives. In the event that the annual Subscriber ascertainment indicates fifty percent (50%) of Subscriber have complained about privacy, Grantee shall make such adjustments to its procedures within three (3) months as are reasonably necessary to accommodate the cable-related community needs relating to privacy.
- (3) Grantee shall not sell, or otherwise make available, lists of the names and addresses of its Subscribers, or any list which identifies the viewing habits or communications over the Cable System by the name or address of any Subscriber, or any Personalized Data pertaining to a Subscriber's use of any of Grantee's Cable Services by the name of any Subscriber, without the express, written consent of the Subscriber to whom the Personalized Data pertains, except as otherwise expressly authorized by federal law. For purposes of this Section, "Personalized Data" means the name and

address or other information regarding an individual Subscriber, which is associated with or extracted from data obtained from the Subscriber's use of Grantee's Cable Services.

- (4) Grantee shall be subject to the provisions of federal law regarding limitations on Grantee's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.
  - (5) Grantee shall not activate two (2)-way communications without the written consent of the Subscriber, and any Cable Service shall be revocable at the discretion of the Subscriber. Grantee shall not use the two (2)-way communications capability of the system or any other Cable Service for unauthorized or illegal Subscriber surveillance of any kind. Written consent, as required herein, shall not be required of any Subscriber by Grantee as a condition of receiving Cable Services.
- (C) Services to People With Disabilities. Grantee shall make Cable Services available to the maximum practical extent to persons with disabilities. Grantee shall provide telecommunication devices for the deaf (TTY) at the cable office during Normal Business Hours and shall disseminate information on the cost and availability of closed-captioning equipment for the hearing impaired and such other services to disabled persons as the City may determine.
- (D) Permission of Property Owner or Tenant for Installation. Grantee shall not install or attach any of its Facilities to any Dwelling Unit or other property without first securing the written permission of the owner or tenant of any property involved, or of such other person who has the right to approve or disapprove the attachment, except where there is an existing utility easement. If such permission or easement is later revoked, Grantee, at the request of the person with the right to approve or disapprove the attachment, shall promptly remove any of its Facilities and promptly restore the property to its original condition at Grantee's expense. Grantee shall perform all such installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation or the removal. Provision of Cable Service may not be conditioned on any right of entry agreement other than as specified in this Agreement. However, this provision shall not affect Grantee's right to furnish additional consideration in exchange for such an agreement.

## **SECTION 11. COMPENSATION AND AUDITING.**

- 11.1 Amount of Compensation. In consideration of permission to use the Rights of Way of the City, Grantee shall pay annually as a franchise fee to the City,

throughout the duration of this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

11.2 Effect of Additional Commitments on Franchise Fees. Except as specifically provided in this Franchise or permitted by federal or state law, no term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay the franchise fee. Although the total sum of franchise fee payments and additional financial and other obligations of this Franchise may exceed five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the sole franchise fee provided for in this Franchise is the franchise fee called for in Section 11.1 and that no other obligation of Grantee under this Franchise constitutes a franchise fee, nor shall any such obligations be offset or credited against any franchise fee payments due to the City, except as specifically provided by this Franchise, other City Ordinance, or federal or state law.

11.3 Payments and Monthly Reports.

(A) Payments. Grantee's franchise fee payments to the City shall be computed monthly following the effective date of this Franchise. Each payment shall be due and payable monthly at the same time as the Utility Business and Occupation Tax payment for the same period.

(B) Monthly Reports. Each payment shall be accompanied by a written report to the City, verified by an officer of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall be in a form satisfactory to the City and shall include revenue by product category.

(C) For purposes of determining franchise fee payments on revenues from Subscribers for Cable Services which are bundled by Grantee with other services, the revenues received from each such Subscriber shall be proportionately allocated among the services in the same percentages that Grantee's published unbundled rate for each such service bears to the total which would be charged by Grantee were all of such services provided at the unbundled rate. If Grantee has no published unbundled rate for one or more of such bundled services, then the allocation of revenue from such bundled services shall be based on the same proportional allocation but shall use the average of the unbundled rates for the most recent two years in which unbundled rates were published for such services. If no unbundled rates are published, then no allocation shall be made and the fee will apply to the total revenues received.

11.4 Interest on Late Payments. Payments not received within 45 days from the quarter ending date shall be assessed interest compounded at the rate of one percent (1%) per month from the due date or the highest rate allowed by law, whichever is greater, but not to exceed eighteen percent (18%) in any event.

11.5 Franchise Fee Credits. To the extent that Grantee pays a Utility Business and Occupations (Utility B&O) tax above the Utility B&O tax rate for telecommunications services, Grantee shall be credited against the franchise fee obligation as follows:

- (A) The credit shall be set by ordinance and shall be a minimum of thirty seven and a half percent (37.5%) of the difference between Grantee's Utility B&O tax rate and the telecommunications tax rate.
- (B) Should the City reduce the rate of its business taxes levied on Grantee by an amount equal to four percent (4%) of Grantee's Gross Revenues, the City may suspend the above credit for the franchise fee and may impose a charge, in accordance with applicable law, to be established by ordinance in an amount not to exceed \$1.00 per month per Subscriber, to cover its costs for cable related purposes, including without limitation, PEG access costs and costs related to the City's connection to the Cable System for Internet communications.
- (C) The City's decision to tax certain of Grantee's services, such as telecommunications services, if any, at different rates from those applicable to traditional cable television services shall not be deemed a reduction of rates for purposes of Subsection (C) above provided that the taxes assessed are applied uniformly to all Cable Service franchisees.

11.6 Acceptance of Payment and Recomputation.

- (A) No acceptance of any payment shall be construed as an accord by the City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable or any other claim or right. All amounts paid shall be subject to audit and recomputation by the City, provided that such audit and recomputation is completed within six (6) years of the date payment was due. If the City requests in writing that Grantee provide, or cause to be provided, any information reasonably within the scope of the audit, and Grantee fails within 30 days of receipt of the request to provide such information or cause it to be provided, then the six (6)-year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee such failure continues and Grantee shall pay liquidated damages in the amount of \$500.00 per day of such failure.



#### 11.7 Audits.

- (A) The City reserves the right to conduct financial audits, not more frequently than once per year, relating to matters arising under this Franchise or to retain an independent Certified Public Accountant to conduct such audits. In the event an audit results in a determination that Grantee has underpaid any franchise fee or tax obligation arising under this Franchise by five percent (5%) or more, or materially misstated financial information in any report furnished to the City, Grantee shall reimburse the City for the costs of the audit.
- (B) Grantee shall pay to the City any amounts which any audit indicates are owed following an independent review of such audit.
- (C) The City reserves the right to perform other audits for franchise compliance purposes.

### **SECTION 12. INDEMNIFICATION, INSURANCE, BONDS AND SECURITY FUND.**

#### 12.1 Indemnification.

- (A) General Indemnification. Grantee shall indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of Grantee, including without limitation any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee or its Parent Corporations, their agents, or their employees, and including any neglect or omission of Grantee to keep its system in a safe condition. This obligation to indemnify and hold the City harmless shall include the obligation to pay attorneys' fees, expert fees, and all other costs of defending any indemnified claim and all such costs incurred in recovering against Grantee under this indemnity provision. To the maximum extent permitted by law, this indemnity obligation shall not be extinguished or reduced in the event an act or omission of the City is a concurrent cause of the claim or loss, but no indemnity shall be owed in the event the sole cause of any claim or loss is the sole negligence of the City or a willful act or omission of the City in violation of this Franchise. Grantee shall consult and cooperate with the City in the conduct of the City's defense. The City shall fully cooperate with Grantee in said defense.
- (B) Indemnification for Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities located on City property or right-of-way in a timely manner in accordance with

Sections 13.3, 13.4, and 13.5 and a relocation schedule furnished Grantee by the City in writing, unless Grantee's failure arises directly from the City's negligence or willful misconduct, or failure of necessary third parties to cooperate with such relocation.

- (C) Duty to Give Notice and Tender Defense. The City shall give Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by this indemnity. In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to accept the tender and thereafter to defend, settle or compromise any claims arising hereunder and the City shall cooperate fully therein.
- (D) Exception to Duty to Tender Defense. Notwithstanding the above, the City shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of Grantee and the City.

12.2 Insurance. Grantee shall maintain insurance coverage satisfactory to the City in the amounts and coverage specified below. At the time this Franchise begins, Grantee shall have submitted such certificates of its insurance coverage as the City may reasonably require and Grantee shall have made such additions or alterations to its coverage as the City shall require. Grantee shall thereafter provide the City with 30 days' written notice of any anticipated changes in the amounts or substance of its insurance coverage as herein required, and shall not make such changes without the City's written consent. Grantee shall arrange for the City to be an additional named insured on any policies of Grantee designated by the City, and shall also provide such certificates of insurance as the City may reasonably request from time to time. The amounts and coverage of insurance shall be: commercial general liability \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a \$2,000,000.00 aggregate limit; automobile liability \$1,000,000.00 combined single limit for bodily injury and property damage.

12.3 Construction Performance Bond. Before beginning any construction work in or under the City streets requiring a street opening permit, Grantee shall furnish a performance bond to the City as is required for street opening permits. The bond shall run to the City with good and sufficient surety approved by the City and shall be maintained in a sum equal to the anticipated cost of the work to be performed, but not to exceed \$2,000,000.00. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements under this Section. The bond shall be conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition under Section 14, General Street Use and Construction. Grantee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated

upon final approval of Grantee's construction work in or under the City streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section.

#### 12.4 Security Fund/Letter of Credit.

- (A) Amount. Grantee's Franchise shall not become effective until Grantee posts with the City a security fund in the form of a cash security deposit or an irrevocable letter of credit, or a combination of the two (2) in an amount equal to \$0.75 per Subscriber in the Franchise Area, but in no event less than \$20,000.00. It is Grantee's responsibility to maintain this Security Fund throughout the Franchise term and to annually on a calendar year adjust balance of such fund to reflect the actual number of subscribers as of the end of the immediate prior year. Before any letter of credit provided to satisfy the Security Fund obligation expires, Grantee must renew it or replace that letter of credit with a cash deposit, letter of credit, or combination of the two (2) in an amount and in a form that satisfies its obligations under this Section.
- (B) Use. The City may draw on the Security Fund to ensure Grantee's faithful performance of the Franchise in accordance with applicable law. If Grantee fails to perform its obligations under the Franchise in any respect, including making any payment to the City required by this Franchise or by applicable law, including liquidated damages, and reimbursable costs incurred by the City, the City may, after ten (10) days' written notice to Grantee, withdraw that amount from the Security Fund, a processing fee equal to five percent (5%) of the sum withdrawn and interest for the period between any loss and the withdrawal. The City shall notify Grantee of the amount and date of any withdrawal.
- (C) Restoration of Fund. Within 30 calendar days after the City gives Grantee written notice that an amount has been withdrawn from the Security Fund, Grantee must deposit a sum of money in the Security Fund sufficient to restore it to the original amount. If Grantee fails to do so, such failure to restore shall be a material breach of this Franchise.
- (D) Return of Fund. If the Franchise terminates for any reason, and Grantee has ceased to provide service in the City, the balance of the Security Fund that remains following termination of the Franchise and satisfaction of all of Grantee's obligations secured by the fund shall be returned to Grantee. The City shall be under no obligation to return funds until a reasonable time, but no longer than 180 days, has elapsed for the City to determine that all such obligations have been satisfied.
- (E) Letter of Credit. Any letter of credit used to satisfy any portion of the Security Fund requirement must:

- (1) Be issued by a bank licensed to do and doing business in the State of Washington;
- (2) Be irrevocable;
- (3) Provide for automatic renewal of the letter unless the bank has given the City written notice by certified mail at least 60 days prior to expiration of the letter;
- (4) Provide that the City may draw against the letter at any time prior to expiration of the letter;
- (5) Provide that the City may draw against the letter and hold the funds in escrow after termination of the Franchise:
  - (a) if the City has filed an action;
  - (b) if the City has sought to draw against the letter prior to termination and Grantee has contested the action or appealed the notice and order; or
  - (c) if the bank or Grantee has challenged or appealed the draw.

### **SECTION 13. GENERAL USE OF AND CONSTRUCTION IN RIGHT OF WAY.**

13.1 Relationship With Other Laws. Construction work and maintenance of any and all facilities within the City's Rights of Way shall be done in accordance with the Seattle Municipal Code, including but not limited to, SMC Title 11, SMC Title 15, and SMC Ch 21.60; City of Seattle Standard Specifications for Road, Bridge and Municipal Construction; City of Seattle Standard Plans for Municipal Construction; City of Seattle Traffic Control Manual for In-Street Work; Seattle Engineering Department Street and Sidewalk Pavement Opening and Restoration Rules (Director's Rule 94-8); any other applicable ordinance, rule or policy; and any amendments thereto. The provisions of Section 13 are meant to be supplemental to the above provisions. In the event of a conflict between the above provisions and this Section, the above provisions shall prevail.

#### 13.2 Construction.

- (A) All construction and maintenance of any and all Facilities within the City's Rights of Way incident to Grantee's Cable System shall be and remain Grantee's responsibility regardless of who performs the construction. Grantee shall apply for and obtain all permits necessary for construction or installation of any Facilities, and for excavating and laying any Facilities, within the City's Rights of Way. Grantee shall pay all applicable fees upon issuance of the requisite construction permits by the City to Grantee, and shall pay all inspection fees and other costs incurred by the City as a result of work authorized by such permit.

- (B) Before beginning any construction, Grantee shall provide the City with a construction schedule for work in the City's Rights of Way. As Grantee's construction of Facilities in the City's Rights of Way is completed or its location subsequently altered during the term of the Franchise, Grantee shall periodically provide the City's cable office with maps showing the location of the installed Facility in the City's Rights of Way, as built.
- (C) Before beginning any work in the City's Rights of Way, Grantee shall apply for and obtain appropriate permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities which may be affected by the proposed excavation.
- (D) When Facilities pass over or under private or publicly owned property it shall be Grantee's sole responsibility to obtain all necessary permission from the owner thereof before commencing work, and to notify all utility companies and property owners who may be subject to damage or inconvenience during such work.

13.3 Relocation. The City shall have the right to require Grantee to change the design or location of any of Grantee's Cable System within the City's Rights of Way when the public convenience or public interest would be served by such a change, and the expense of making such changes shall be paid by Grantee. Should Grantee fail to remove or relocate or redesign any such Facilities by the date reasonably established by the City, the City may effect such removal or relocation or redesign, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the City's Rights of Way, the City shall provide Grantee with an alternate location within the City's Rights of Way. Nothing herein shall prevent Grantee from participating in any alternative funding for relocation.

13.4 Restoration of City's Rights of Way.

- (A) Whenever Grantee disturbs the surface of any Right of Way for any purpose, the City shall be responsible for restoration of the City's Right of Way and its surface within the area affected by the excavation unless the City authorizes Grantee in the street use permit to perform such restoration work. The cost of all restoration work, including the cost of inspection and supervision shall be paid by Grantee. All excavations made by Grantee in the City's Rights of Way shall be properly safeguarded for the prevention of accidents.

13.5 Maintenance and Workmanship.

- (A) Grantee's Cable System shall be constructed and maintained so as not to interfere with sewers, water pipes, conduits or any other property of the City, or with any other pipes, wires, conduits, structures or other facilities that may have been placed in the City's Rights of Way by or under the City's authority.
- (B) Grantee shall operate its Cable System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose.
- (C) Grantee shall not construct its Cable System in any manner that requires any Subscriber to install any cable, wire, conduits or other facilities, under or over a Right of Way.

- 13.6 Acquisition of Facilities. Upon Grantee's acquisition of Facilities in any City Right of Way, or upon the addition or annexation to the City of any area in which Grantee owns or operates any Facility in any City Rights of Way, Grantee shall at the City's request, submit to the City a statement and as-built plans describing all existing Facilities, whether authorized by franchise, permit, license or other prior right, and depicting the location of all such Facilities with such specificity as the City may reasonably require. Such Facilities shall immediately be subject to the terms of this Franchise and shall be brought into compliance with it as soon as practicable. In the event the new Facilities or annexed area have characteristics that make literal application of any term in this Franchise inappropriate, the parties will negotiate in good faith to modify this Franchise solely with respect to such characteristics and only to the extent necessary to achieve consistency with the purpose of this Franchise.
- 13.7 Reservation of City Right of Way Rights. Nothing in this Franchise shall prevent the City from constructing, maintaining, or repairing any City Right of Way, or public work or improvement in the City's Rights of Way. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System. However, if any of Grantee's system will interfere with the construction, maintenance, or repair of any City Right of Way or public work or improvement in the City's Rights of Way, at its own expense Grantee shall remove or relocate its system as the City directs. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may effect such removal, adjustment or relocation and recover the cost thereof from Grantee, including all costs and expenses incurred by the City due to Grantee's delay.
- 13.8 Reservation of Rights and Privileges. Nothing in this Franchise shall deprive the City of any rights or privileges which it now has, or which may hereafter be conferred upon it, including any rights to exercise its police powers in the regulation and control the use of the Rights of Way.

- 13.9 Street Vacation. If any street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated street, Grantee shall, without delay or expense to the City, remove its Facilities from such street and the expense thereof shall be paid by Grantee.
- 13.10 Discontinuing Use of Facilities. Whenever Grantee intends to discontinue using any Facility or capacity within the City's Rights of Way, Grantee shall submit for the Director of Seattle Transportation's approval a complete description of the Facility and the date on which Grantee intends to discontinue using the Facility or capacity. Grantee may remove the Facility or request that the City permit it to remain in place. Notwithstanding Grantee's request that any such Facility remain in place, the Director of Seattle Transportation may require Grantee to remove the Facility from the City's Right of Way or modify or maintain the Facility or capacity to protect the public health and safety or otherwise serve the public interest. The Director of Seattle Transportation may require Grantee to perform a combination of modification, maintenance, and/or removal of the Facility and/or capacity. Grantee shall complete such removal or modification in accordance with a schedule set by the Director of Seattle Transportation. Until such time as Grantee removes or modifies the Facility as directed by the Director of Seattle Transportation, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as maintenance of the City's Right of Way, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.
- 13.11 Hazardous Substances.
- (A) Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Cable System in the City's Rights of Way. For purposes of Section 13.11, "Hazardous Substances" shall be all substances so characterized in RCW 70.105D.020(7).
  - (B) Grantee shall maintain and inspect its Facilities located in the City's Rights of Way and immediately inform the City of any release of Hazardous Substances. Upon reasonable notice to Grantee, the City may inspect Grantee's Facilities in the City's Rights of Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Facilities. In removing or modifying Grantee's Facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances related thereto; provided, however, if it is determined that Grantee's owned facilities did not cause the release of Hazardous Substances, Grantee shall have no duty to remove such substances.

- (C) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of Hazardous Substances arising from, connected to or incident to Grantee's Facilities in the City's Rights of Way.

13.12 Undergrounding of Cable. Grantee is strongly encouraged to locate and construct its present and future cables and other facilities underground. Grantee shall install its cables or other Facilities underground wherever and at the same time existing utilities and other Cable Facilities in the immediate vicinity are installed underground, where all utilities and Cable Facilities are placed underground, or where statute or ordinance requires utilities to be placed underground. Previously installed aerial cable shall be undergrounded in concert, and on a reasonable cost-sharing basis, with other utilities pursuant to the general ordinances of the City or applicable State law, or in the event that a public utility decides to underground its facilities on a voluntary basis, unless the City grants an exception.

13.13 Construction Codes. Grantee shall strictly adhere to all building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any Person. In the event of such interference, the City may require the removal or relocation of Grantee's lines, cables, and other appurtenances from the property in question at Grantee's expense.

13.14 Construction and Use of Poles. Grantee shall negotiate and enter into pole attachment agreements with utilities maintaining poles in Grantee's Franchise Area on terms acceptable to Grantee and the affected utilities and in compliance with SMC Ch. 15.32; provided, any obligations to provide fiber or capacity that might be imposed on Grantee under SMC Ch. 15.32 and any amendments thereto, shall be deemed fully satisfied for the term of this franchise and any extensions by Grantee's agreement to install, at the time of Grantee's own construction, fiber for the City in accordance with the following provisions:

- (A) In the course of Grantee's own construction of its Cable System Grantee shall include at the City's request additional fiber for the City's exclusive use for governmental and educational purposes. Such purposes shall not include any lease, license, or other transfer to any third party of the right to use such fiber and shall not include any commercial use. However, such purposes may include the following uses, for which the City may receive payment to defray its costs of installation and maintenance:

The City may make such fibers available to other governments and public educational institutions that are participants in the interlocal partnership as approved in Ordinance 117981 as distinctly leased fibers or as part of a



shared transmission system where signals are mixed with City signals in the same transmission system.

- (B) Grantee will from time to time and to the extent practicable, notify the City of its intended sequence, location, and timing of Construction of the Cable System, and, specifically the intended sequence, location and timing for Grantee's obtaining and laying fiber for its Construction. The City may advise Grantee of the City's requirements for additional fiber. The City shall within 45 days of receipt of such information from Grantee, notify Grantee of the City's requirements for additional fiber. Grantee shall cooperate with the City in routing its distribution fiber to facilitate connections to public buildings such as community centers and elementary schools. All incremental costs of implementing routing changes requested by the City shall be paid by the City.
- (C) The City shall bear the incremental cost of adding the additional fiber during Grantee's construction and the incremental cost, if any, of maintenance.
- (D) Grantee's agreement to provide fiber under this Section shall not be construed as acquiescence in or admission of the City's authority to impose such obligations unilaterally as set forth in Ordinance No. 116633. The City's agreement to these provisions does not constitute acknowledgement of any lack of the City's authority to impose obligations unilaterally as set forth in Ordinance No. 116633.

13.15 Tree Trimming. Grantee must submit all construction plans and/or pruning plans to the City for initial review before any work begins. This review may take place concurrently with reviews required by Seattle Transportation or its functional successor.

## **SECTION 14. TRANSFER OF GRANTEE'S CABLE SYSTEM.**

### **14.1 Prior Consent of City.**

- (A) Transfer Defined. For purposes of Section 15.1, "Transfer" shall mean any form of sale, conveyance, mortgage, assignment, merger, pledge, encumbrance, deed or grant, lease (not including lease of channels or fiber capacity), and whether voluntary or involuntary.
- (B) City Approval of Transfers.
  - (1) Neither this Franchise nor any substantial property owned and operated by Grantee by authority of this Franchise shall be Transferred without the prior consent of the City. The City's granting of consent in one instance shall not affect the requirement of consent in any other instance. Within ten (10) days after execution and delivery of any instrument so consented to by the

City, Grantee shall file with the City an executed counterpart or certified copy thereof. For purposes of this Section, "substantial property" means any property the transfer of which would substantially affect Grantee's performance of its obligations under this Franchise.

- (2) In determining whether the City will consent to any Transfer, the City may inquire into the qualifications of the prospective party. Grantee shall assist the City in any such inquiry. Without restricting any rights the City may have under federal law to impose conditions upon a transfer of all or part of this Franchise, the City may condition any Transfer upon such conditions as it reasonably deems appropriate to enable the City to enforce this Franchise and to assure continued performance pursuant to the terms of this Franchise.
- (3) Nothing contained in Section 14.1 shall be deemed to prohibit the mortgage, pledge or assignment of tangible assets of Grantee's Cable System, including but not limited to accounts receivable, inventory or monetary assets, for the purpose of financing the acquisition of equipment or for the acquisition, construction and operation of Grantee's Cable System, without the City's consent, but any such mortgage, pledge or assignment shall be subject to all other rights of the City under this Franchise.

14.2 Change in Control. Grantee shall promptly notify the City of any proposed Transfer or acquisition by any other party resulting in a change of control of Grantee or Guarantor of performance. Such change in control shall make this Franchise subject to revocation unless and until the City shall have consented thereto.

## **SECTION 15. CITY RIGHT TO PURCHASE.**

### **15.1 Purchase of Grantee's Cable System After Termination or Expiration.**

- (A) Subject to the requirements of federal law, if the City has terminated this Franchise as provided in Section 19, or if the initial term of this Franchise has expired without the franchise being renewed or extended, and if the City has so ordered by ordinance, Grantee shall continue its operations for a period of up to 270 additional days. During this period, Grantee shall not Transfer any portion of its Cable System to any other Person, including parts of the system rented, leased or lease-purchased from others by Grantee, without the prior consent of the City.
- (B) Within 30 days of the effective date of termination or following the expiration of the term of this Franchise, if the City has not otherwise renewed or extended the Franchise, Grantee shall submit a report

(hereafter referred to as the "System Reports") to the City setting out Grantee's assessment of the fair market value of Grantee's Cable System and the methodology, assumptions and limiting conditions underlying Grantee's appraisal. Both parties recognize and accept that such methodology shall take into account the fact that Grantee's Cable System will be operated or be capable of being operated as part of a regional system and that even if this Franchise is terminated, Grantee's Facilities may be used by Grantee to provide other services to Subscribers. In addition, Grantee shall provide such further information regarding its technical and customer operations, contractual or other legal obligations, and financial history and current condition as the City may request.

- (C) At any time within 60 days after receiving the System Report, the City may notify Grantee that it desires to acquire by purchase all or a portion of Grantee's Cable System.
- (D) For purposes of Section 15.1, the price of Grantee's Cable System shall be the fair market value as a going concern, less any offsets, as determined by mutual agreement between the City and Grantee. If the City and Grantee are unable to agree within 120 days after the City gives notice of desire to purchase under Section 15.1(C), then the City may demand that such price and/or any offsets the City may claim be determined by arbitration, as provided for in Section 21.2, in which case, following the arbitrator's determination, the City shall have the option to purchase the Cable System for the price determined by the arbitrator. In the case of the expiration of the Franchise without renewal, fair market value shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the City may assume.
- (E) For purposes of Section 15.1, book value shall mean the fully depreciated assets of Grantee.
- (F) In the event of the City's acquisition of all or portions of Grantee's Cable System, as provided in Section 15.1, Grantee shall consent to assignment of any rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities and shall use all best efforts to obtain consent to assignment, to the extent any existing and future rental, lease, and lease-purchase arrangements for Grantee's Cable System or any Facilities require such consent, and shall cause any entity it controls to so consent.

## **SECTION 16. REGULATION OF RATES AND CHARGES.**

- 16.1 City Regulation. To the extent consistent with state and federal law, Grantee's rates and charges shall be subject to City regulation and approval.
- 16.2 Filing of Rates and Charges.

- (A) Throughout the term of this Franchise, Grantee shall maintain on file with the City a complete schedule of all rates and charges related to providing Cable services under this Franchise, in a form satisfactory to the City.
- (B) Grantee shall provide a complete schedule of rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels. Upon the City's request, Grantee shall furnish additional detail or explanation in writing.

16.3 Changes in Rates and Charges.

- (A) Grantee shall provide written notice to the City and Subscribers at least 30 days in advance of any proposed change in rates and charges.
- (B) Grantee shall be entitled to increase regulated rates only as provided in this Franchise. Grantee and the City shall follow the process for establishing increases in rates and charges set forth in SMC Ch. 21.60, as now constituted or hereafter amended. Grantee shall provide all information reasonably requested by the City.

16.4 Reasonable Discounts Provided.

- (A) Economically Disadvantaged. Grantee shall provide reasonable discounts of not less than thirty percent (30%) on the lowest generally available Basic tier Service rates, installation, and equipment rental charges if necessary to receive service, to Subscribers with low incomes as qualified in the City's Rate 26 or 27 program or to Subscribers living in subsidized housing or in a housing subsidy program. If Grantee does not provide Basic Service, the discounts shall be the same as the discount provided by another cable operator with a City cable franchise that does provide Basic Service. Customers meeting low-income criteria and subscribing to a higher tier of service shall only be eligible for a discount equal to the discount for Basic Service. At such time as no cable operators in the City offer Basic Service as a distinct tier of service, discounts shall be applied to the lowest tier of service offered Subscribers. In no event, shall the discount be less than when set at thirty percent (30%) of Basic Service.

16.5 Multiple Unit Buildings. Grantee shall ensure that rates charged by Grantee to residents of multiple unit buildings shall not exceed the charges paid by residents of single family homes. Grantee may not condition provision of services to multiple unit buildings on any requirement not imposed on other Subscribers, except as expressly provided in this franchise. Grantee may not condition provision of services to multiple unit buildings on an exclusive use agreement with Grantee. Grantee may offer a building owner the option of a long term agreement in return for installation of internal wiring or other telecommunications

improvements unique to the building, but Grantee must offer the alternative of a no term agreement to building owners who wish to contract directly for installation by a contractor approved by Grantee and in accordance with Grantee's generally applicable technical standards.

16.6 Regulation of Equipment for Hearing Impaired. To the extent authorized by law, the City reserves the right to require and regulate the installation or rental of equipment which facilitates the reception of Standard Cable Service by hearing impaired individuals.

16.7 Downgrade Charges.

(A) Grantee may impose Downgrade Charges only if the subscriber has been notified, at the time of initiating Cable Services, and annually thereafter, of Grantee's Downgrade Charges.

(B) Affected subscribers shall have 30 days after a retiering or increase in rates to downgrade their service without charge.

16.8 Reserved City Authority. Subject to Section 16.1, the City reserves all regulatory authority arising from the Cable Television Consumer Protection and Competition Act of 1992, as now in effect or hereafter amended.

## **SECTION 17. RECORDS AND REPORTS.**

17.1 Open Records. Grantee shall maintain Records of its operations that are open and accessible to the City. The City shall have the right to inspect such Records of Grantee as are reasonably necessary to monitor compliance with the Franchise at a location in the City during Normal Business Hours and upon reasonable notice. If any such Records are under the control of an Affiliated Entity or a third party or are stored in a computer, Grantee shall promptly take steps to secure access to such records as are reasonably necessary for the City's inspection.

17.2 Annual Reports. Grantee shall annually present a written report to the City (the "Annual Report"). Grantee shall submit the Annual Report no later than 120 days after the close of its fiscal year. The Annual Report shall include information for Grantee's operations within the City for the immediately preceding year, including, but not limited to:

(A) System structural and operating information;

(B) Changes, additions or deletions made in the Cable System since the last annual report. Complete and accurate system maps, which shall include but not be limited to detail of trunks, distribution lines, and nodes, as described in Section 13.2(B), shall be available at Grantee's offices for City review. In addition, the City may request a copy of Grantee's system maps annually as needed to update the City's maps.

- (C) System ownership, including all levels of Affiliated and Parent Corporations and controlling ownership percentages;
- (D) An organization chart for Grantee, listing its officers, directors, department heads, and supervisors for major activity centers by category including names positions and business addresses.
- (E) Total Cable System mileage and number of homes passed;
- (F) Cable Services provided on Grantee's Cable System, including services begun or dropped during the previous year;
- (G) A schedule of all Grantee's rates and charges with notations of changes occurring during the year and the dates of such changes.
- (H) For Grantee's Cable System in the City: (1) miles of system plant; (2) homes passed; (3) numbers of basic and expanded basic subscribers; and (4) number of pay units.
- (I) A statistical summary of telephone responsiveness, identifying on a monthly average basis the percent of time the telephone system has all trunks busy, the number of callers to Grantee's Subscriber service or repair lines who fail to reach a Subscriber service representative in less 30 seconds, and providing any other information the City reasonably deems necessary to determine if Grantee has met the performance standards of Section 9.
- (J) A summary of all Cable System outages in a form acceptable to the City. An outage includes a loss of one or more video or audio channels, but does not include instances where the sound or video is lost prior to its receipt by the Cable System.
- (K) The current complaint procedures followed by Grantee and a general summary of complaints by type.
- (L) Annual proof-of-performance tests, showing performance of the Cable System with respect to applicable FCC technical standards.
- (M) Copies of current form contracts between subscribers and Grantee.
- (N) Grantee's development or incorporation of new technology on Grantee's Cable System, such as addressability, interactivity, pay-per-event Programming, teletext, data communications or other entertainment and non-entertainment services.
- (O) A general summary of requests and usage patterns for Leased Access Channels, if any.

- (P) A description of the progress made in construction and completion of Grantee's Cable System.
- (Q) A list of all petitions, applications, communications, and reports having a direct and material effect on the Cable System, submitted by Grantee and its Parent Corporations to the FCC, the Securities and Exchange Commission or any other federal or state regulatory agency. Grantee shall make copies of any such Documents and any related communications with the respective agencies available to the City upon request.
- (R) A copy of its equal employment opportunity plan and Form 395A filed with or submitted to the FCC.
- (S) Financial information as follows:
  - (1) Financial statements for Grantee's Cable System and, if not maintained by Grantee separately for the Cable System, then such statements as maintained by Grantee's lowest operating level containing such financial information for the Cable System, prepared in accordance with generally accepted accounting principles.
  - (2) Such other non-proprietary information of Grantee as the City may reasonably request;
  - (3) Planned construction or Upgrade activity of Grantee's Cable System within the City for the current Year and the projected costs of such activity;
  - (4) Parent Corporation's annual corporate reports, including their audited financial statements;
  - (5) Statement describing joint ventures or partnerships in which Grantee owns at least a five percent (5%) interest.

17.3 Monthly Reports. Starting 24 months after the effective date of this Franchise, Grantee shall submit a monthly system report. The report shall include the following cumulative information as of the month of the report: the total number of dwelling units passed; percentage of dwelling units passed; miles of aerial and underground plant; total number of cable service Subscribers; total number of Subscribers itemized by service tier; number of Subscribers receiving pay per view and other premium Cable Services. During the first 24 months of this Franchise, Grantee shall provide quarterly reports which contain the total number of dwelling units passed; miles of aerial and underground plant and number of Subscribers.

17.4 Public Hearing. If directed by the City, the non-confidential and non-proprietary portions of Grantee's Annual Report shall be presented at a public hearing at

which Grantee shall summarize the contents of the Annual Report and members of the general public may comment thereon.

- 17.5 Reports of Regulatory Violations. Grantee shall provide copies to the City of any report, order, consent decree, or other formal determination of any regulatory agency having jurisdiction over Grantee pertaining to any alleged violation by Grantee of any applicable rule or law of the agency regarding Grantee's provision of Cable Services under this Franchise.
- 17.6 Public Records. Grantee acknowledges that information submitted to the City is subject to the Washington Public Disclosures Law, and is open to public inspection. Grantee may identify information that Grantee believes is non-disclosable, such as trade secrets, submitted to the City as confidential. Grantee shall prominently mark any information for which it claims confidentiality with the mark "Confidential", in letters at least one-half (1/2) inch in height, prior to submitting such information to the City. The City shall treat any information so marked as confidential except as provided below. If the City receives a request for confidential information, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. The City shall retain the right to determine whether it is required to release the requested confidential information under applicable law. If, after considering Grantee's written response, the City determines that it is required to release all portions of the requested information, the City shall provide Grantee notice to that effect a minimum of five (5) business days prior to releasing the requested information.

## **SECTION 18. EQUAL EMPLOYMENT OPPORTUNITY.**

- 18.1 Non-Discrimination and Affirmative Action. During the performance of this contract, Grantee agrees as follows:

Grantee will not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.



Grantee will, prior to commencement and during the term of this contract, furnish to the Department of Finance Director (as used herein "Director" means the Department of Finance Director or his/her designee) upon his/her request and on such form as may be provided by the Director therefor, a report of the affirmative action taken by Grantee in implementing the terms of these provisions, and will permit access to its records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purposes of investigation to determine compliance with this provision.

If upon investigation the Director finds probable cause to believe that Grantee has failed to comply with any of the terms of these provisions, Grantee and the Office of Cable Communications shall be so notified in writing. The Office of Cable Communications shall give Grantee an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend the contract and/or withhold any funds due or to become due to Grantee, pending compliance by Grantee with the terms of these provisions.

Failure to comply with any of the terms of these provisions shall be a material breach of this franchise.

The foregoing provisions will be inserted in all subcontracts for work covered by this franchise.

- 18.2 Minority and Female Business Enterprises. If this Franchise generates opportunities for subcontracting, Grantee shall make affirmative efforts to utilize women's business enterprises and minority business enterprises as defined in SMC Ch. 20.46A, require that its subcontractors do so, and maintain records necessary to demonstrate compliance with the requirements of this subsection.

## **SECTION 19. REMEDIES FOR NON-COMPLIANCE.**

### **19.1 Termination.**

- (A) In the event of a material breach of this Franchise by Grantee, the City may, without limitation, exercise all rights and remedies provided for herein or otherwise available under the law, including termination of the Franchise. Without limitation, the following shall constitute material breaches of this Franchise:
- (1) Grantee's failure or refusal to pay any required financial support for PEG Access or other required support for PEG Access such as interconnection;
  - (2) Any failure by Grantee to provide required Channel capacity;
  - (3) Any failure by Grantee reasonably within its control to adhere to required schedules and any extensions for completion of the Cable System;

- (4) Failure to comply with Section 5.4 (Ascertainment Process).
  - (5) Failure of Grantee to implement technical upgrades ordered after full review pursuant to Sections 20 and 21.
  - (6) Failure to indemnify the City and hold it harmless as required by Section 12.1.
- (B) In the event the City intends to terminate this Franchise pursuant to the previous Subsection, the City shall provide a written notice to cure, identifying the nature of the breach with reasonable specificity, and advising Grantee of the City's intent to terminate the Franchise. All further actions shall conform to the following procedures:
- (1) Grantee shall, within 30 days after receipt of such notice or such longer period of time as the City may specify in such notice, either cure such alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of such alleged failure or state that such alleged failure will be cured and set forth the method and time schedule for accomplishing such cure.
  - (2) The City shall determine (1) whether a failure to comply with a material provision has occurred; (2) whether such failure is excusable; and (3) whether such failure has been cured or will be cured by Grantee. Grantee shall make available to the City, if requested, any records, documents or other information necessary to make the determination.
  - (3) If the City determines that a failure to comply with a material provision has occurred and that such failure is not excusable and has not been or will not be cured by Grantee in a manner and in accordance with a schedule reasonably satisfactory to the City, then the City shall so notify the City Council in a written report which may recommend action to be taken by the City Council. The City shall provide notice and a copy of such report to Grantee. In the event that the City determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to the City, or that such failure is excusable, such determination shall conclude the investigation.
  - (4) Any termination of this Franchise shall be by ordinance adopted by the City Council; provided, however, before any such ordinance is adopted, Grantee must be given at least 45 days advance written notice, which notice shall set forth the causes and reasons for the proposed termination and cancellation, shall advise Grantee that it will be provided an opportunity to be heard by the City Council

regarding such proposed action before any such action is taken, and shall set forth the time, date, and place of the hearing. In no event shall such hearing be held less than 45 days following delivery of such notice to Grantee. At the hearing, Grantee shall be entitled to all the rights of due process consistent with the City procedures, including but not limited to, the right to present evidence and the right to be represented by counsel.

- (C) The enumeration of material Franchise provisions set forth in this Section is not exhaustive and shall not be invoked under any guideline for contract interpretation to narrow the scope of other material terms, violation of which would be a material breach of this Franchise.

## 19.2 Liquidated Damages.

- (A) Amounts of Liquidated Damages. Because Grantee's failure to comply with provisions of the Franchise will result in injury to the City in amounts that will be difficult to quantify with reasonable certainty, the City and Grantee agree to the following Liquidated Damages for the following violations. These damages represent the parties' best estimate of the damages resulting from the specified injury. The liquidated damage amounts are in 1996 dollars and shall be increased each year by the increase in the U.S. Consumer Price Index.
  - (1) For failure to substantially complete Cable System in accordance with the Franchise: \$10,000.00 per month for each month the violation continues;
  - (2) For any transfer subject to the provisions of Section 15 without prior City approval: \$200.00 per day for each day the violation continues;
  - (3) For failure to comply with requirements for public, educational, and governmental PEG requirements of the franchise and use of the System: \$0.50 per subscriber for each month the violation continues, but not to exceed \$10,000.00 per month;
  - (4) For violation of applicable Subscriber service standards:
    - (a) For standards requiring a percentage performance: \$1,000.00 per quarter for each percentage point below the required performance;
    - (b) For failure to maintain required Subscriber Service Centers: \$1.00 per subscriber per month, but not to exceed \$5,000.00 per month;
    - (c) For other violations: \$200.00 per occurrence;

- (5) For violation of any material technical performance standards of this franchise agreement: \$500.00 per occurrence;
- (6) For all other material violations of this Agreement: \$500.00 per occurrence.

(B) Procedure for Imposing Liquidated Damages.

- (1) Whenever the City believes that Grantee has violated one or more terms, conditions or provisions of this Franchise, and Liquidated Damages will be sought, a written notice shall be given to Grantee informing it of such alleged violation or liability. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have 30 days subsequent to receipt of the notice in which to correct the violation before the City may impose liquidated damages unless the violation is of such a nature so as to require more than 30 days and Grantee proceeds diligently within the 30 days to correct the violation.
- (2) Grantee may, within ten (10) days of receipt of notice, notify the City that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the City shall specify with particularity the matters disputed by Grantee. The dispute shall then be resolved pursuant to Section 21.2.

(C) Effect on Duty to Comply. The collection of liquidated damages by the City shall in no respect affect

- (1) Compensation owed to subscribers; or
- (2) Grantee's obligation to comply with the provisions of this Franchise or applicable law.

(D) Accrual. Liquidated Damages accrue from the date the City notifies Grantee that there has been a violation.

19.3 Relationship of Remedies.

- (A) Non-Exclusivity of Remedies. The remedies provided for in this Franchise and SMC Ch. 21.60 as now or hereafter amended, are cumulative and not exclusive; the exercise of one (1) remedy shall not prevent the exercise of another, or the exercise of any rights of the City at law or equity.
- (B) No Election of Remedies. Without limitation, the withdrawal of amounts from the Security Fund, or the recovery of amounts under the insurance, indemnity, bonding or liquidated damages provisions of this Franchise

shall not be construed as a limit on the liability of a Grantee under the Franchise or an excuse of faithful performance of any obligation of Grantee.

- 19.4 Non-Waiver. Grantee shall not be relieved of its obligations to comply, promptly and completely, with any provision of the Franchise by reason of any failure of the City to promptly enforce compliance with this Franchise, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.
- 19.5 Cost Treatment of Fines, Liquidated Damages, Damages. No cost to Grantee arising from a breach or violation of the Agreement shall be recovered from subscribers, shall form the basis for any adjustment to subscriber rates or other subscriber charges or shall be offset against any sums due the City as a tax, franchise fee or otherwise regardless of whether the combination of franchise fees and said costs exceeds five percent (5%) of Grantee's Gross Revenues in any 12-month period.

## **SECTION 20. REOPENERS.**

- 20.1 Grounds. The occurrence of any of the following shall be grounds for the City or Grantee to reopen the Franchise as further provided in this Section:
- (A) Any event that gives rise to a right to terminate the Franchise under any other provision, to be exercised only by the City.
  - (B) Any court or quasi-judicial action that invalidates or substantially negates the effect of any material provision of this Franchise.
  - (C) Any state or federal legislation that invalidates or substantially negates the effect of any material provision of this Franchise.
  - (D) Any proposed or actual use of the cable system by Grantee that is not expressly provided for in this Franchise and that invalidates or substantially negates the effect of any material provision of this Franchise.
  - (E) Any required upgrade or digitization of a substantial portion of the cable system where Grantee asserts, and carries the burden of establishing, that the required upgrade, digitization or implementation is not technically or commercially feasible.
  - (F) Any ascertainment of present or future cable related community needs and interests that results in a determination that specific provisions of this Franchise no longer reflect such community needs and interests.
  - (G) Any change in the competitive environment for Cable Services provided by Grantee whereby Grantee's compliance with the terms of this Franchise would place it at an unfair competitive disadvantage with other providers

of equivalent services, in which case the standards of Section 1.4 shall apply.

- (H) As provided in Subsection 7.2 (D) regarding internet service provided through the Cable System.

## 20.2 Reopener Procedure.

- (A) The City or Grantee shall make a determination that grounds exist to implement the reopener provisions of this Section and shall formally notify the other party in writing and in reasonable detail of that determination, the grounds for it, and the proposed modification deemed necessary to address the event giving rise to the reopener; provided, however, if the grounds asserted are within those described in Section 20.1(E), the City shall first schedule a public hearing, with adequate notice to the public and Grantee, to address the benefits, expense, and potential costs to subscribers, of implementing such modifications.
- (B) For a period of 90 days following Grantee's receipt of the notice, Grantee and the City shall seek to negotiate an amendment to the Franchise reflecting the grounds identified in notice of reopener in light of the cable related community needs and interests and the cost of meeting those needs and interests.
- (C) If Grantee and the City are unable to reach agreement within the 90-day period, the matter shall be submitted to arbitration, using the arbitration procedure set forth in Section 21.

## 20.3 Criteria Governing Arbitration Decision.

- (A) The arbitrators shall decide whether either party has established a right to a modification of the Franchise based upon the grounds identified in the reopener notice and in light of the evidence presented to them and applicable legal authority, including without limitation any legal review conducted pursuant to Section 21, and if so, shall prescribe the modification.
- (B) The arbitrators shall make the determination of whether a right to a modification exists, and the nature of any such modification, based on the following criteria:
  - (1) Whether the particular modification is needed to meet the present and future cable-related community needs and interests, taking into account the cost of meeting those needs and interests during the term of this Franchise and any proposed extension; provided, in the case of an arbitration involving an upgrade pursuant to Section 7.6(A)(1), the arbitrator shall be limited to determining

whether the requirement of Section 7.6(A)(1) has been met by the City.

- (2) Whether the particular modification is within the lawful power of the City.
- (3) Whether the party having the burden of proof has met its burden.

## **SECTION 21. MISCELLANEOUS PROVISIONS.**

### **21.1 Compliance With Laws.**

- (A) Subject to Section 1.5, Grantee shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.
- (B) Nothing in this Franchise is intended to authorize Grantee to engage in any activity constituting a violation of federal or state antitrust laws, including, but not limited to, the Sherman Act, the Clayton Act, the Robinson-Patman Act or any related amendments or regulatory provisions.

### **21.2 Arbitration.**

- (A) All disputes relating to the interpretation, application, violation or enforcement of this agreement shall be arbitrated as provided in this Section 21.2 except as provided below:
  - (1) To the extent that any dispute otherwise arbitrable involves the interpretation or application of state or federal laws that govern the rights and obligations of the parties under this Franchise, such interpretation or application of federal or state law shall not be subject to arbitration, but shall be resolved judicially. This exception shall not extend to the application of the common law to legal issues arising in the arbitration, or to the application of statutes that generally affect the interpretation of contracts.
  - (2) In the event that any material provision of the franchise agreement is determined to be invalid or unenforceable, or a reopener gives rise to a renegotiation of the agreement, and the parties are unable to agree upon appropriate modifications of the agreement, the agreement shall be modified by arbitration in accordance with this Section 21.2. Provided, however, to the extent either party establishes probable inconsistency between a proposed modification and federal or state law governing this agreement, excluding common law or statutes governing contracts generally, the arbitration proceeding shall be stayed upon the request of either party made in a proceeding filed in federal court. In any event,

either party shall have the right to seek judicial resolution of issues within Section 21.2(A)(1) either before or after any arbitration proceeding.

- (3) In order to minimize the likelihood of a dispute regarding the arbitrability of specific questions under the previous the previous Sections, the parties agree, by way of example and not limitation, that the following issues of law are not subject to arbitration, but shall be resolved judicially at the instance of either party: (1) preemption under federal or state law and the interpretation and application of any federal or state laws that are determined to have preemptive effect; (2) the application of any federal or state law that governs the parties' relationship independently of the franchise agreement; (3) injunctive relief.
- (B) Without limiting the generality of the arbitration provision, and subject to the exceptions stated above, the parties agree that disputes arising under the following provisions of the agreement shall be arbitrable and the determination of the arbitrators shall be final and binding upon both the City and Grantee, except to the extent legal review is permitted hereunder: Access Channel assignments and interconnections; upgrade or rebuild; franchise fee modification; franchise modification due to changes in the law; ascertainment reopener.
- (C) Either party may initiate arbitration by sending written notice to the other.
- (D) In the event an arbitration is initiated by either party, each party has 15 days from the date of receipt of written notice, to provide to the other party in writing, a list of six (6) persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.
- (E) The City and Grantee shall mutually select three arbitrators from the list within five (5) days after the exchange of proposed arbitrators information. If the City and Grantee are unable to agree upon these arbitrators within the time specified herein, then the arbitrators shall be appointed by the Chief Judge of the Federal District Court for the Western District of Washington or, if said judge declines to act, by the Presiding Judge of the King County Superior Court.
- (F) After the arbitrators have been selected, they shall take an oath to serve neutrally and impartially. The arbitrators shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and Grantee. The hearing shall occur not less than 100 days after the appointment of the arbitrators except for good



cause shown. The arbitrators shall make a written report to the City and Grantee on their final determination within 30 days after completion of the hearing. The determination of the arbitrators shall constitute a final arbitration determination.

(G) The arbitration shall be conducted in Seattle, Washington, in accordance with the then existing rules of the American Arbitration Association, except where inconsistent with this Franchise agreement, but not under the auspices or control of the AAA unless the parties so agree. Judgment upon any award by the arbitrators may be entered by the state or federal court having jurisdiction.

(H) The cost of the arbitration shall be divided equally between the City and Grantee. Each party shall be responsible for its own costs.

- 21.3 Severability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, except as is otherwise provided in this Franchise.
- 21.4 No Recourse Against City. Grantee's recourse against the City or its officials, boards, commissions, agents or employees for any claim arising from any provision or requirement of this Franchise shall be limited to injunctive relief and declaratory relief, except where Grantee's claim arises from acts or omissions of the City acting in a proprietary capacity, but only to the extent such relief is not prohibited by federal law. For purposes of this Section, the City shall not be considered to be acting in a proprietary capacity in granting, modifying, denying, terminating, or enforcing franchises.
- 21.5 Action by Agencies or Courts. Grantee shall promptly notify the City in the event that any agency of the federal government or the State of Washington or any court with competent jurisdiction requires Grantee to act inconsistently with any provisions of this Franchise.
- 21.6 Other Cable Franchises. The City shall not be limited or prevented by any provision in this Franchise from issuing any franchise, permit, license or other agreement of any kind for all of Grantee's Franchise Area or any portion thereof, to other cable providers. This provision shall not alter any rights of Grantee under Section 1.4.
- 21.7 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the King County Superior Court, and if in the federal courts, in the United States District Court for the Western District of Washington.
- 21.8 Force Majeure. Grantee shall have no liability to City for penalties or damages, nor shall City have the right to terminate this Franchise as a result of any failure or delay of Grantee to perform its obligations hereunder if such failure or delay is

caused by factors beyond the control of Grantee, including without limitation, war, civil disturbance, flood or other Act of God, laws, regulations, rules or orders of any governmental agency, sabotage, strikes, failure or delay in transportation, labor, or the unavailability of any product or material necessary to the performance hereof, provided that Grantee has exercised all due care to prevent the occurrence of such events which are reasonably foreseeable, including without limitation, actively pursuing alternative products, materials, labor and means of transportation. In the event that delay in performance or failure to perform affects only part of Grantee's capacity to perform, then Grantee shall perform to the extent it is reasonably able to do so. In correcting any causes of non-performance or delay, and in effecting any partial performance, Grantee shall take all necessary corrective actions as expeditiously as possible.

- 21.9 Notice. Any notice provided for under this franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

Department of Information Technology  
Office of Cable Communications  
City of Seattle  
810 Third Avenue, Suite 442  
Seattle, Washington 98104

If to Grantee:

James C. Vaughn  
Chief Executive Officer  
Western Integrated Networks, LLC  
2000 South Colorado Boulevard, Suite 2-800  
Denver, Colorado 80222  
Telephone: (303) 407-1601